

**50 PRELIMINARY INSTRUCTION: JURORS' CONDUCT; EVIDENCE;
TRANSCRIPTS NOT AVAILABLE; CREDIBILITY; SUBSTANTIVE
ISSUES; OPENING STATEMENT**

Before the trial begins, there are certain instructions you should have to better understand your functions as a juror and how you should conduct yourself during the trial.

Your duty is to decide the case based only on the evidence presented at trial and the law given to you by the court. Anything you may see or hear outside the courtroom is not evidence. All people deserve fair treatment in our system of justice, regardless of their race, national origin, religion, age, ability, gender identity, sexual orientation, education, income level, or any other personal characteristic. People make assumptions and form opinions from their own personal backgrounds and experiences. Generally, we are aware of these things, but you should consider the possibility that you have biases of which you may not be aware which can affect how you evaluate information and make decisions.¹

You must carefully evaluate the evidence and resist any urge to reach a verdict that is influenced by any bias for or against any party, witness, or attorney. Personal opinions, preferences or biases have no place in a courtroom, where our goal is to treat all parties equally and to arrive at a just and proper verdict based on the evidence.

Do not begin your deliberations and discussion of the case until all the evidence is presented and I have instructed you on the law. Do not discuss this case among yourselves or with anyone else until your final deliberations in the jury room. This order is not limited to face-to-face conversations. It also extends to all forms of electronic communications.

Do not use any electronic devices, such as a mobile phone or computer, text or instant messaging, or social networking sites, to send or receive any information about this case or your experience as a juror.

We will stop, or “recess,” from time to time during the trial. You may be excused from the courtroom when it is necessary for me to hear legal arguments from the lawyers. If you come in contact with the parties, lawyers, (interpreters,) or witnesses, do not speak with them. For their part, the parties, lawyers, (interpreters,) and witnesses will not contact or speak with the jurors. Do not listen to any conversation about this case.

Do not research any information that you personally think might be helpful to you in understanding the issues presented. Do not investigate this case on your own or visit the scene, either in person or by any electronic means. Do not read any newspaper reports or listen to any news reports on radio, television, over the internet, or any other electronic application or tool about this trial. Do not consult dictionaries, computers, electronic applications, social media, the internet, or other reference materials for additional information. Do not seek information regarding the public records of any party or witness in this case. Any information you obtain outside the courtroom could be misleading, inaccurate, or incomplete. Relying on this information is unfair because the parties would not have the opportunity to refute, explain, or correct it.

Do not communicate with anyone about this trial or your experience as a juror while you are serving on this jury. Do not use a computer, cell phone, or other electronic device,

including personal wearable electronics, applications, or tools with communication capabilities, to share any information about this case. For example, do not communicate by telephone, blog post, e-mail, text message, instant message, social media post, or in any other way, on or off the computer.

Do not permit anyone to communicate with you about this matter, either in person, electronically, or by any other means. If anyone does so despite your telling them not to, you should report that to me. I appreciate that it is tempting when you go home in the evening to discuss this case with another member of your household, but you may not do so. This case must be decided by you, the jurors, based on the evidence presented in the courtroom. People not serving on this jury have not heard the evidence, and it is improper for them to influence your deliberations and decision in this case. After this trial is completed, you are free to communicate with anyone in any manner.

These rules are intended to assure that jurors remain impartial throughout the trial. If any juror has reason to believe that another juror has violated these rules, you should report that to me. If jurors do not comply with these rules, it could result in a new trial involving additional time and significant expense to the parties and the taxpayers.

You are to decide the case solely on the evidence offered and received at trial.

EVIDENCE [WIS JI-CRIMINAL 103]

Evidence is:

First, the sworn testimony of witnesses, both on direct and cross-examination,

regardless of who called the witness.

Second, the exhibits the court has received, whether or not an exhibit goes to the jury room.

Third, any facts to which the lawyers have agreed or stipulated or which the court has directed you to find.

OBJECTIONS [ADD WIS-JI CRIMINAL 148 IF DESIRED]

NOTETAKING [ADD WIS-JI CRIMINAL 55 OR 56 IF DESIRED]

QUESTIONS BY JURORS [ADD WIS-JI CRIMINAL 57 IF DESIRED]

TRANSCRIPTS NOT AVAILABLE FOR DELIBERATIONS; READING BACK TESTIMONY [WIS-JI CRIMINAL 58]

You will not have a copy of the written transcript of the trial testimony available for use during your deliberations. [You may ask to have specific portions of the testimony read to you.] You should pay careful attention to all the testimony because you must rely primarily on your memory of the evidence and testimony introduced during the trial.

POLICE REPORTS [ADD WIS JI-CRIMINAL 59 IF DESIRED]

CREDIBILITY OF WITNESSES [WIS JI-CRIMINAL 300]

It is the duty of the jury to scrutinize and to weigh the testimony of witnesses and to determine the effect of the evidence as a whole. You are the sole judges of the credibility, that is, the believability, of the witnesses and of the weight to be given to their testimony.

In determining the credibility of each witness and the weight you give to the testimony

of each witness, consider these factors:

- whether the witness has an interest or lack of interest in the result of this trial;
- the witness' conduct, appearance, and demeanor on the witness stand;
- the clearness or lack of clearness of the witness' recollections;
- the opportunity the witness had for observing and for knowing the matters the witness testified about;
- the reasonableness of the witness' testimony;
- the apparent intelligence of the witness;
- bias or prejudice, if any has been shown;
- possible motives for falsifying testimony; and
- all other facts and circumstances during the trial which tend either to support or to discredit the testimony.

Then give to the testimony of each witness the weight you believe it should receive.

In your determination of credibility, you must avoid any and all bias based on the witness's race, national origin, religion, age, ability, gender identity, sexual orientation, education, income level, or any other personal characteristic.

There is no magic way for you to evaluate the testimony; instead, you should use your common sense and experience. In everyday life, you determine for yourselves the reliability of things people say to you. You should do the same thing here.

SUBSTANTIVE INSTRUCTIONS – ELEMENTS OF THE CRIME

BURDEN OF PROOF [ADD WIS JI-CRIMINAL 140 IF DESIRED]**OPENING STATEMENTS [WIS JI-CRIMINAL 101]**

The lawyers will now make opening statements. The purpose of an opening statement is to give the lawyers an opportunity to tell you what they expect the evidence will show so that you will better understand the evidence as it is introduced during the trial. I must caution you, however, that the opening statements are not evidence.

COMMENT

Wis JI-Criminal 50 was originally published in 1991 and revised in 1995, 1999, 2001, 2003, 2009, and 2020. The 2020 revision expanded on the use of social media and other digital tools. This revision was approved by the Committee in June 2022; it expanded the range of personal characteristics that may affect jurors consideration of the evidence. It also added to the comment.

The 2009 revision added cautions regarding use of computers, cell phones and other electronic communication devices and about communicating via blogs, e mail, text messages, etc. See page 2. The Committee tried to integrate those cautions into the broader concerns addressed by the instruction: deciding the case only on the basis of evidence introduced at trial, not communicating with others about the case while it is pending, and not making up one's mind until all the evidence is in. Communication by jurors after the trial is concluded, whether or not by electronic means, is covered by the general rule that jurors may, but are not required to, discuss their jury service with anyone. See Wis JI-Criminal 525.

The Michigan Supreme Court has adopted a rule requiring judges to instruct jurors not to use electronic communication devices during trials. See, Amendment of Rule 2.511 of the Michigan Court Rules, June 30, 2009, ADM File No. 2008 33.

This instruction as originally published dealt only with juror conduct during the trial. The 1999 revision added the material relating to defining "evidence," credibility, substantive instructions, and opening statements. These are matters that, in the Committee's judgment, are most typically included in the preliminary instructions. Adding other general material or giving fewer instructions than recommended here are matters within the discretion of the individual trial judge. Practice apparently varies as to repeating the instructions included here as part of the final instructions in the case. The Committee concluded that the instructions defining the offense and the instruction on the burden of proof should always be included in the final instructions.

In 2021, the Committee examined the issue of bias as it pertained to the jury instructions. Specifically, a comprehensive review of scholarly articles concerning the emerging concept of implicit bias was

conducted, which included reports from the National Center for State Courts and the American Bar Association. After much discussion, the Committee determined that current non-exhaustive list of personal characteristics should be expanded. Language was also added that clarified that any personal preferences, opinions, prejudices, stereotypes, sympathies, or biases must not influence a juror's decision.

The Committee also concluded that attorneys have an important role in addressing bias. Research regarding the efficacy of jury instructions addressing the impact of implicit bias is still evolving.

1. For further information regarding the selection of impartial juries see, Achieving an Impartial Jury (AIJ) Toolbox, American Bar Association, 17-18 (2015), https://www.americanbar.org/content/dam/aba/publications/criminaljustice/voirdire_toolchest.pdf; Elek, J. & Miller, A. The Evolving Science on Implicit Bias: An Updated Resource for the State Court Community, National Center for State Courts (March 2021), <https://ncsc.contentdm.oclc.org/digital/collection/accessfair/id/911>.